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SUBJECT: NINEWA OPERATIONS COMMAND: SOME DETAINEES FINALLY RELEASED BUT SERIOUS PROBLEMS REMAIN

REF: A. BAGHDAD 1117

1B. BAGHDAD 884

Classified By: Deputy Chief of Mission Robert Ford for reason 1.4 (d).

Summary

11. (C) The Government of Iraq is trying to adequately address problems relating to its detainee population. The Nineva Operations Command (NOC) is a particularly egregious offender. Although most of the approximately 1,000 people incarcerated at the NOC have had their cases reviewed by an investigative judge, the NOC Commander has refused to release hundreds of prisoners in possession of valid judicial release orders. These detainees have languished behind bars for months and sometimes years. In addition, conditions at the various NOC detention facilities fall well short of international, and even Iraqi humanitarian, standards for prisoners. Despite efforts by the Minister of Defense, Minister of Human Rights and the Chairman of the Higher Judicial Council, the NOC Commander has disregarded due process (ref A). However, on May 20, after repeated approaches by PRT-Nineva, MOD officials and Emboffs, the NOC Commander finally released a group of 68 former Camp Bucca detainees held at the NOC and 59 additional individuals in possession of release orders. End summary.

The Process is Broken

12. (C) From May 9-12, Poloff accompanied the MOD's Director of Human Rights, Iman Naji, and a representative from Multi-National Security Transition Command-Iraq (MNSTC-I) on an unannounced inspection visit to the NOC, one of a number of operations commands under Ministry of Defense (MOD) authority. In cooperation with Coalition Forces (CF) and Iraqi Security Forces (ISF), the team inspected facilities at al-Kindi, Command Outpost (COP) Spear, and al-Kisik, all of which are under NOC control. Nearly a thousand detainees are currently held at these locations. While this number has been decreasing over recent months, new prisoners continue to arrive; during the visit to COP Spear, Poloff witnessed a busload of 21 prisoners entering the detention center.

13. (C) Various ministries, including the MOD, Interior (MOI), Justice (MOJ) and Labor and Social Affairs (MOLSA) have responsibility for and are in control of detainees (ref B). Under Iraqi law, the MOD has no authority to detain citizens for lengthy periods. However, citing overcrowding in other facilities, and given a lack of communication among the various ministries, the MOD has independently established detention facilities under the auspices of various operations commands, including the NOC and the Baghdad Operations Command (BOC). (Note: During a May 18 meeting with Poloff, the MOI's Director of Human Rights disputed MOD's often-repeated charge that it continues to hold detainees to accommodate overcrowding at MOI facilities. The MOI official

claimed that the MOD prefers to hold prisoners in its own facilities, rather than send them to an MOI pre-trial detention center, to circumvent the judicial process. End note.).

¶4. (C) Within this overburdened, overcrowded and often-dysfunctional system, the NOC stands alone for its categorical disregard of judicial release orders. In February, nearly 500 of the detainees in custody were in possession of such orders (ref B). This number has since dropped to between 100-200. Many of these detainees received their release orders over six months ago, yet continue to languish in the NOC's facilities. When questioned about this disregard for the judicial process, ISF officers claimed that they are simply waiting for confirmation from other ministries that no outstanding warrants exist for the detainees. (Comment: As no centralized warrants database exists in Iraq, this can be a process without end. End comment.). Moreover, once a judge issues such a decree, the individual's case is essentially closed. Although the judiciary has the authority to open a criminal investigation as to why a detainee remains incarcerated, neither the police nor the judiciary have the power to enforce release orders. Thus, if the order is not properly executed, the detainee as a practical matter has little legal recourse. His freedom rests largely in the hands of the NOC Commander.

¶5. (C) Many of the problems at the NOC are attributable to its commander, Staff Major General (SMG) Hassan Khodeer Abdul-Karim. According to ISF officials responsible for the various detention centers, they may not release detainees without SMG Abdul-Karim's permission. Release requests often

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sit on his desk for weeks or months before he provides a response, or he may ignore it entirely. Despite attempts by the Minister of Defense, the Minister of Human Rights, PRT-Ninewa and Emboffs, SMG Abdul-Karim has refused to comply with validly issued judicial release orders in accordance with Iraqi law if, in his opinion, the prisoner constitutes a security threat.

Bucca Transferees

¶6. (C) In late 2008 and early 2009, 73 prisoners were transferred from USG custody at Camp Bucca to NOC control. In November 2008, a group of 25 detainees was transferred to USG-controlled Camp Cropper and from there to local police forces in Ninewa, who handed them over to the NOC on January ¶22. An additional 48 former Bucca inmates were sent to COP Spear in February. Since these transfers, MNF-I, in cooperation with the GOI, has instituted a formal structure for the review of all detainees held by CF (ref A). (Note: Detainees are only transferred to the GOI if an arrest warrant or detention order is procured. End note.). Despite this close cooperation between the USG and GOI, and the lack of outstanding arrest warrants on these particular individuals, the "Bucca 73" remained incarcerated in Ninewa by order of the NOC Commander for months.

Some Detainees Released

¶7. (C) PRT-Ninewa, in cooperation with the local bar association, has engaged for months with NOC officials, local judges and Ninewa police in an attempt to secure the release of all detainees holding release orders, including the Bucca transfers. In April, the Ministry of Human Rights sent an inspection team to the NOC whose findings were conveyed to Prime Minister Maliki. The Embassy has raised the issue with GOI officials, including the Prime Minister and his staff. Poloff visited the NOC facilities between May 9-12 and met

with numerous NOC officials during this trip. Additionally, Naji met privately with the NOC Commander on May 12 to press for the release of all detainees holding release orders. On May 20, PRT-Ninewa confirmed that 68 of the 73 Bucca transferees had been released. Warrants or detention orders were procured for five individuals who will be transferred to appropriate pre-trial detention facilities. On May 21, MNSTC-I confirmed that an additional 59 detainees were released.

Inhumane Conditions at the NOC

¶18. (C) Humanitarian conditions at the NOC are also of grave concern. None of the facilities meets internationally recognized standards for detention centers. Despite the fact that the NOC, which is under the MOD's authority, does not have a mandate to hold prisoners, some have been incarcerated in these facilities for upwards of a year and a half. Many of the structures being used as detention facilities were clearly not built for such a purpose. Some prisoners are being held in an old stadium. Over 50 detainees are kept in a "holding cell," no more than 20 feet by 20 feet, which more closely resembles a broom closet than a detention facility. Prisoners are typically held in this room prior to being transferred to one of the larger facilities; while this usually takes place within 48 hours of arrest, some detainees claimed to have been there for over two weeks.

¶19. (C) Detainees across the board complained of a lack of access to lawyers, infrequent contact with family members, and inadequate medical care. In some of the facilities, Qand inadequate medical care. In some of the facilities, prisoners lacked potable drinking water, sufficient bathroom facilities and little-to-no outdoor time. Overcrowding was a problem throughout the NOC; at the primary detention center on FOB Shield, over 100 inmates were being held in each of five 500 square foot rooms, and had to share one toilet and one shower per room. While none of the detainees complained of current abuse at the hands of their guards, many of them displayed scars from earlier beatings, which typically took place within 48 hours of arrest, during their "interrogation."

The Ministry of Human Rights Jumps Into the Fray

¶10. (C) Poloff raised the inhumane conditions at the NOC with Minister of Human Rights Wijdan Salim, who confirmed that she is aware of the situation at the NOC. An inspection

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team from the ministry visited the facilities in April, finding conditions very similar to those on evidence to Poloff last week. Despite assurances from the NOC commander that detainees with release orders would be immediately set free, hundreds remain. Salim said that SMG Abdul-Karim had assured the Ministry of Human Rights team that the approximately 50 people being held in the "holding cell" would be transferred to appropriate MOI pre-trial detention facilities. One month later, they were still there. Minister Salim is drafting a second letter to Prime Minister Maliki on the subject and plans to raise the issue in her next meeting with Vice President Tariq al-Hashimi. She also plans to discuss it with the Minister of Defense and Chief Justice Medhat. If these "private" approaches do not succeed, she plans to "go public" with the NOC detainee situation, providing details and photographs to the local and international media.

Comment

¶11. (C) While the humanitarian situation at the NOC would be sufficient reason for immediate GOI intervention, the breakdown in the legal system is of even more concern. Iraq has made important strides implementing the rule of law since ¶2003. The police force has grown exponentially. Judges, for the most part, do not feel threatened or intimidated to rule in a particular manner, and their personal safety has improved. Though often forced to wait several months, those who are arrested generally do get their day in court. Yet the Nineva Operations Command remains one of the system's "problem children."

¶12. (C) The release and/or transfer of most of the Bucca detainees on May 20 is a step forward. However, it remains to be seen whether this is truly a permanent change of direction or merely an attempt by the NOC Commander to assuage specific USG concerns. Although security in Nineva is perhaps the most tenuous of all Iraq's governorates, the province is not in a state of martial law; due process and judicial orders still apply to its citizens. The Embassy and PRT-Nineva will continue to monitor the situation and, as appropriate, remind the NOC Commander of his legal obligations and the need to adhere to the established rule of law.

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